

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff,
v.
CRISTOBAL ORTIZ,
Defendant.

Case No. CR15-43RSL

ORDER DENYING
DEFENDANT'S MOTION
FOR RECONSIDERATION

This matter comes before the Court on defendant's "Motion for Reconsideration of Compassionate Release." Dkt. # 187.¹ Having reviewed the motion, the Court's previous Order (Dkt. # 186), the memoranda of the parties associated with the motion for compassionate release, and the record contained herein, the Court finds as follows:

I. BACKGROUND

Defendant is a 33-year-old inmate currently incarcerated at the Federal Correctional Institution (“FCI”) Victorville Medium II. On March 10, 2016, defendant pled guilty to one count of conspiracy to distribute controlled substances in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), and 846, and one count of possession of a firearm in furtherance of a drug trafficking offense, in violation of 18 U.S.C. § 924(c) and 2. Dkt. # 137. On June 2, 2016, the Court sentenced defendant to 120 months’ imprisonment and five years of supervised release.

¹ The Court finds compelling reasons justify sealing the government's memorandum regarding defendant's vaccination status (Dkts. # 189, # 189-1). The government's motion to seal (Dkt. # 188) is accordingly GRANTED.

1 Dkt. # 158. Defendant is currently scheduled for release from the custody of the Federal Bureau
2 of Prisons (“BOP”) on September 28, 2023.

3 On September 8, 2020, defendant filed a motion seeking compassionate release under 18
4 U.S.C. § 3582(c) based on increased risk for complications if he contracts COVID-19 while
5 incarcerated. Dkt. # 175. The Court denied defendant’s motion for compassionate release on
6 October 19, 2020. Dkt. # 186. Defendant now moves for reconsideration of his motion for
7 compassionate release. Dkt. # 187. Motions for reconsideration are disfavored in this district and
8 will be granted only upon a “showing of manifest error in the prior ruling” or “new facts or legal
9 authority which could not have been brought to [the Court’s] attention earlier with reasonable
10 diligence.” LCR 7(h)(1).

11 II. DISCUSSION

12 Defendant contends that he “may have qualified for relief but for the Court’s use of an
13 inapplicable Guideline.” Dkt. # 187 at 3. Defendant correctly observes that this Court’s Order
14 denying defendant’s motion for compassionate release stated: “Prior to granting defendant’s
15 motion for compassionate release, the Court must find that he ‘is not a danger to the safety of
16 any other person or to the community, as provided in 18 U.S.C. § 3142(g).’ U.S.S.G. § 1B1.13.
17 Defendant’s record precludes such a finding.” Dkt. # 186 at 7. The Ninth Circuit has since held
18 that U.S.S.G. § 1B1.13 “is not an ‘applicable policy statement’ for 18 U.S.C. § 3582(c)(1)(A)
19 motions filed by a defendant.” United States v. Aruda, 993 F.3d 797, 798 (9th Cir. 2021).
20 Although the Court’s previous Order cited U.S.S.G. § 1B1.13 and used the phrase “must find,”
21 this Court also explicitly referred to “the guidance of U.S.S.G. § 1B1.13 [as] persuasive, but not
22 binding.” Dkt. # 186 at 5 n.1. Moreover, the Court stated in its previous Order that it agreed with
23 the government’s analysis of the § 3553(a) factors, which courts consider prior to granting a
24 defendant’s motion for compassionate release. Dkt. # 186 at 7 n.2; 18 U.S.C. § 3582(c)(1)(A)
25 (reflecting that a court may modify a term of imprisonment after the defendant has fully
26 exhausted and “after considering the factors set forth in section 3553(a) to the extent that they
27 are applicable, if it finds that—(i) extraordinary and compelling reasons warrant such a

1 reduction . . .”). In reexamining its previous Order post-Aruda, the Court finds no reason to
2 disturb its ruling denying relief.

3 Defendant’s motion for reconsideration appears to focus on arguing that new legal
4 authority rendered the Court’s prior ruling erroneous, not that new facts demonstrate manifest
5 error. See Dkt. # 187 at 1–3 (e.g., “A recent case where the district court denied the defendant’s
6 motion for compassionate release on similar grounds requires reconsideration here.”). That said,
7 the motion refers to defendant reporting to his counsel that he tested positive for COVID-19 a
8 few months after this Court denied his motion and that he suffers from lingering symptoms, Dkt.
9 # 187 at 3, but no documentation was included to support these allegations. Moreover, the
10 government has offered BOP records documenting that defendant is now fully vaccinated, and
11 that he received his second dose of the Moderna vaccine prior to defendant filing the instant
12 motion for reconsideration. Dkts. # 189, # 189-1. “According to the CDC, the Moderna vaccine
13 is exceptionally safe and effective, preventing 94.1% of infections in clinical trials.” United
14 States v. Smith, No. 17-CR-20753, 2021 WL 364636, at *2 (E.D. Mich. Feb. 3, 2021) (citing
15 Information About the Moderna COVID-19 Vaccine, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/Moderna.html>). “Courts in this circuit have found that a
16 defendant’s receipt of the COVID-19 vaccine weighs against granting compassionate release.”
17 United States v. Nash, No. CR-03-00059-001-PHX-JAT, 2021 WL 1969729, at *3 (D. Ariz.
18 May 6, 2021) (citing United States v. Cortez, No. CR-18-00858-01-PHX-SPL, 2021 WL
19 689923, at *1 (D. Ariz. Feb. 23, 2021) (denying compassionate release because defendant had
20 received vaccine); United States v. Grummer, No. 08-CR-4402-DMS, 2021 WL 568782, at *2
21 (S.D. Cal. Feb. 16, 2021)). At the time of the Court’s previous Order denying defendant’s
22 motion for compassionate release, FCI Victorville Medium II reported seven inmates and 18
23 staff with active, positive COVID-19 test results. Dkt. # 186 at 6. As of June 3, 2021, FCI
24 Victorville Medium II reports only one inmate and one staff member with active, positive
25 COVID-19 test results. COVID-19 Coronavirus, Fed. Bureau of Prisons,
26 <https://www.bop.gov/coronavirus/> (last visited June 3, 2021). Given defendant’s vaccination, the
27 low infection rate at FCI Victorville Medium II, and the lack of evidence supporting defendant’s
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1 claim that he has suffered lingering effects of COVID-19, the Court finds that defendant has not
2 established “extraordinary and compelling” circumstances to justify compassionate release.

3 Even assuming *arguendo*, that defendant has established “extraordinary and compelling”
4 circumstances for compassionate release purposes, the Court’s analysis of the § 3553(a) factors
5 leads the Court to conclude that compassionate release is not warranted. The Court may engage
6 in a public safety analysis in the context of the § 3553(a) factors, which include: (i) “the nature
7 and circumstances of the offense and the history and characteristics of the defendant”; (ii) the
8 need for the sentence imposed “to reflect the seriousness of the offense, to promote respect for
9 the law, and to provide just punishment for the offense”; to adequately deter criminal conduct;
10 “to protect the public from further crimes of the defendant”; and “to provide the defendant with
11 needed educational or vocational training, medical care, or other correctional treatment in the
12 most effective manner”; (iii) “the need to avoid unwarranted sentence disparities among
13 defendants with similar records who have been found guilty of similar conduct”; (iv) the
14 sentencing guidelines; and (v) “the need to provide restitution to any victims of the offense.” 18
15 U.S.C. § 3553(a); see also United States v. Grimes, No. CR11-5509 BHS, 2021 WL 319404
16 (W.D. Wash. Jan. 26, 2021) (summarizing relevant factors).

17 The Court agrees with the government that the nature and circumstances of the offenses
18 were extremely serious. Dkt. # 179 at 20. Defendant was involved in a conspiracy to distribute
19 large quantities of methamphetamine and heroin, and he armed himself to facilitate this scheme.
20 PSR ¶¶ 10–17. Of the four firearms found at defendant’s residence, three were determined
21 stolen. PSR ¶ 14. Defendant’s three children lived at the residence and were thereby exposed to
22 the risks associated with the combination of narcotics and firearms. Id. Defendant’s criminal
23 history and characteristics also weigh against compassionate release. The government accurately
24 summarized that defendant’s criminal history includes “convictions for assault, theft, driving
25 under the influence, burglary, firearm possession, reckless endangerment, distribution of heroin,
26 and numerous criminal traffic convictions.” Dkt. # 179 at 21; PSR ¶¶ 33–58. Moreover,
27 defendant has a history of escalating situations, fleeing law enforcement, and failing to appear in
28

1 court. See, e.g., PSR ¶¶ 46, 49, 57, 63, 64. Defendant also has been sanctioned for infractions
2 during his incarceration as recently as February 2020. Dkt. # 181 at 125.

3 Defendant previously admitted that other factors (“Need to Promote Respect for the Law,
4 Provide Just Punishment for the Offense, and Afford Adequate Deterrence. Need to Protect the
5 Public from Further Crimes”) are not favorable, but defendant contended that keeping him
6 incarcerated for the remaining time on his sentence—now around 28 months—would not
7 provide that much more value to the public. Dkt. # 175 at 9–10. Ultimately, “considering
8 defendant’s extensive criminal history, the Court remains concerned that if released, he will
9 once again fall into destructive behavioral patterns.” Dkt. # 186 at 7. The Court already
10 commended defendant for “engaging in educational programming while in prison, and for
11 expressing a desire to turn his life around so that he can ‘build a bright future for his kids,’” Dkt.
12 # 186 at 7, but the Court again concludes that defendant’s circumstances do not warrant a
13 reduction in sentence.

14 The Court finds no manifest error in its previous Order denying defendant's motion for
15 compassionate release, and the new legal authority cited by defendant does not merit awarding
16 the relief defendant seeks. Accordingly, defendant's motion for reconsideration must be
17 DENIED.

III. CONCLUSION

19 For all the foregoing reasons, defendant's motion for reconsideration (Dkt. # 187) is
20 DENIED. The government's motion to seal (Dkt. # 188) is GRANTED.

21 || IT IS SO ORDERED.

DATED this 11th day of June, 2021.

Mrs Casnik

Robert S. Lasnik
United States District Judge